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DEC 24 1998

FCC MAIL ROOM

CHRISTINE TODD WHITMAN
Governor



State of New Jersey

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December 21, 1998

PETER VERNIERO
Attorney General

JEFFREY J. MILLER
Assistant Attorney General
Director

Honorable Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Petition for Waiver of Sections 214(e) and 254(e) of
the Telecommunications Act of 1996

Dear Secretary Salas:

Enclosed please find an original and five (5) copies of a
Petition for Waiver of Sections 214(e) and 254(e) of the
Telecommunications Act of 1996 filed by the New Jersey Board of
Public Utilities on behalf of United Telephone Company of New
Jersey, Inc. Please file-stamp one copy and return it to me in
the enclosed envelope.

Very truly yours,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: Eugene P. Provost
Eugene P. Provost
Deputy Attorney General

c: Mark W. Musser, Secretary
H. Kaye Dailey, Esq.
Blossom A. Peretz, Esq.
Anthony Centrella
John DeLuca

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 24 1996

FCC MAIL ROOM

In the matter of:)
)
Federal-State Joint Board on) CC Docket No 96-45
Universal Service)

PETITION FOR WAIVER OF SECTION 214(e) AND 254(e)
OF THE TELECOMMUNICATIONS ACT OF 1996
FILED BY THE NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities ("Board") herewith petitions the Federal Communications Commission ("FCC") for a waiver of 47 U.S.C. §§214(e) and 254(e), and FCC regulations and orders adopted pursuant thereto. Specifically, the Board requests that the FCC determine that United Telephone Company of New Jersey, Inc. ("United") is eligible to receive federal universal support effective January 1, 1998, less than one month prior to the date upon which the Board certified United as an eligible telecommunications carrier pursuant to 47 U.S.C. §214(e). United is now eligible for and has received federal universal service support effective February 1, 1998 pursuant to certain Orders of the Board. Should the Commission grant this petition, United would become eligible to receive federal universal service support for one additional month for those customers eligible to receive such support.

By way of background, on November 7, 1997, United filed a petition with the Board seeking approval to be designated an eligible telecommunications carrier (ETC) and to be eligible for universal service support. On January 22, 1998, pursuant to 47 U.S.C. §214(e), the Board designated United an ETC for the geographic area which it currently serves. See Order of Approval, I/M/O Petition by United Telephone Company of New Jersey, Inc. For Designation as an Eligible Telecommunications Carrier Under The Telecommunications Act of 1996, Docket No. TO97110828 (January 23, 1998) (attached hereto as Exhibit A). On December 2, 1997, United petitioned the Board for approval of a Lifeline Service tariff. On January 22, 1998, the Board approved United's Lifeline tariff effective February 1, 1998, finding that United's proposal complied with relevant FCC regulations and will promote universal service in New Jersey. See Order of Approval, I/M/O Petition by United Telephone Company of New Jersey, Inc. For Approval to Provide Lifeline Service, Docket No. TT97120880 (January 23, 1998) (attached hereto as Exhibit B). United filed a Motion for Reconsideration on February 9, 1998 requesting that the Board clarify and order that United's ETC status and its Lifeline plan be approved effective January 1, 1998. On December 16, 1998, the Board approved United's Motion for Reconsideration, ordering United's Lifeline tariff be effective January 1, 1998, and directing Board staff to file a petition with the FCC requesting that United be declared eligible for federal universal service support effective January 1, 1998. Order on

Reconsideration, I/M/O Petition by United Telephone Company of New Jersey, Inc. For Designation as an Eligible Telecommunications Carrier under The Telecommunications Act of 1996 and I/M/O Petition by United Telephone Company of New Jersey, Inc. For Approval to Provide Lifeline Service, Docket Nos. TO97110828 and TT97120880 (December 16, 1998) (attached hereto as Exhibit C).

This petition is filed pursuant to the FCC's Fourth Order on Reconsideration in its Universal Service docket. In the Fourth Order on Reconsideration, I/M/O Federal-State Joint Board on Universal Service, 13 F.C.C.R. 2372 (1997) (CC Docket No. 96-45, and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, FCC 97-420 (released on December 30, 1997)) ("Fourth Order"), the FCC recently considered and approved a mechanism whereby eligibility for federal universal service support retroactive to January 1, 1998 could be obtained. In its Fourth Order on Reconsideration the FCC affirmed a previous conclusion that, as of January 1, 1998, the universal service fund administrator may not disburse support to carriers that have not been designated as eligible under 47 U.S.C. §214(e), and that if a carrier has not been designated as eligible by January 1, 1998, it may not receive support until such time as it is designated an eligible telecommunications carrier. Fourth Order on Reconsideration at ¶23. Nevertheless, the FCC agreed with certain industry comments that a state commission that is unable to designate as an ETC before January 1, 1998, a carrier which

had sought such designation before January 1, 1998, "should be permitted, once it had designated such carrier, to file with the Commission a petition for waiver requesting that the carrier receive universal service support retroactive to January 1, 1998." Ibid. The FCC declared that it is in the public interest to permit telecommunications carriers to seek retroactive support, and that allowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for the circumstances that prevented the state commission from designating the carriers as eligible for receipt of universal service support prior to January 1, 1998. Ibid. Finally, the FCC stated that such a state commission petition for retroactive support eligibility for a carrier must explain why the state commission did not designate such carrier as eligible by January 1, 1998, and provide justification for why providing support retroactive to January 1, 1998 serves the public interest. Ibid.


United has taken all reasonable steps to be designated as an eligible telecommunications carrier and to have its Lifeline program approved by January 1, 1998. However, due to the timing of the filing of its ETC and Lifeline petitions, and the press of Board business, the Board was unable to act on United's applications to assure January 1, 1998 federal universal support eligibility. The Board has already determined that United meets all the FCC requirements to be designated an eligible telecommunications carrier and that its Lifeline program

will promote universal service in New Jersey by making basic telephone service more affordable to low-income consumers. Without this universal service support, United's ability to provide universal service throughout its service territory would be affected. As demonstrated by the granting of United's Motion for Reconsideration, the Board believes that United's eligibility for universal service support retroactive to January 1, 1998 is in the public interest.

WHEREFORE, for the foregoing reasons, the Board respectfully requests that the FCC grant this petition for waiver of 47 U.S.C. §§214(e) and 254(e) and declare United eligible for federal universal support retroactive to January 1, 1998.

Peter Verniero
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Newark, New Jersey 07101
Attorney for the New Jersey
Board of Public Utilities

Dated: December 21, 1998 By:



Eugene P. Provost
Deputy Attorney General

Exhibit A



AGENDA DATE: 1/22/98

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF A PETITION BY)
UNITED TELEPHONE COMPANY OF NEW)
JERSEY, INC. FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER UNDER THE TELECOMMUNI-)
CATIONS ACT OF 1996)

ORDER OF APPROVAL

DOCKET NO. TO97110828

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated November 7, 1997, United Telephone Company of New Jersey, Inc. (United) filed a petition with the Board of Public Utilities (Board) seeking approval to be designated an Eligible Telecommunications Carrier (ETC) pursuant to Section 102 of the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §151 et seq.) (the Act), and specifically, ~~47 U.S.C. §214(e) and 47 C.F.R. §54.400 et seq.~~ Pursuant to the Act, only a common carrier which is designated as an ETC shall be eligible to receive universal service support. 47 U.S.C. 214(e)(1). Under the Act, in order to be eligible for universal service support, it is necessary for a telephone company, such as United, to be designated an ETC by the Board. 47 U.S.C. §214(e)(2); 47 C.F.R. §54.201(b).

Pursuant to Federal Communications Commission (FCC) regulations, an ETC must offer the following:

- (1) voice grade access to the public switched network;
- (2) local usage defined as an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;
- (3) dual tone multi-frequency signaling or its functional equivalent;
- (4) single-party service or its functional equivalent;
- (5) access to emergency services;
- (6) access to operator services;
- (7) access to interexchange services;

- (8) access to directory assistance; and
- (9) toll limitation for qualifying low income customers.

See 47 C.F.R. §§54.201(d) and 54.101. In addition, 47 C.F.R. §54.405 requires that all ETCs shall make available Lifeline Service as defined in 47 C.F.R. §54.401.

In its filing, United asserted that it provides all of the above services with the exception of toll limitation services. United has requested a waiver, of the FCC's toll limitation requirements in light of the fact that it is incapable of providing toll control services as defined by 47 C.F.R. §54.400(c). United argued that the toll control requirement constitutes a misunderstanding regarding rational expectations of local exchange carrier capabilities, and that the issue will likely be reevaluated in FCC reconsideration orders. United requested that the Board grant a "blanket waiver" with respect to the toll control requirement until such time as the FCC acts upon pending requests for reconsideration of its Universal Service Order.

Finally, we note that at the time of its ETC filing, United did not have an approved Lifeline program in place as required of all ETC's by 47 C.F.R. §54.405. As will be explained below, shortly after this petition was filed, United filed a request for approval of a Lifeline service tariff.

Discussion

On December 2, 1997, United filed a petition (Docket No. TT97120880) requesting Board approval of a Lifeline Service tariff. Lifeline Service is a retail service offering available only to qualifying low-income consumers pursuant to which such consumers pay reduced charges for certain services or functionalities enumerated in FCC regulations as a result of the application of federal and/or state universal service support mechanisms. 47 C.F.R. §54.401. On January 1, 1998, \$3.50 per month per individual residence line in federal support is available to qualified ETCs providing Lifeline Service, with an additional \$1.75 also available without matching funds if the state requests it, and finally up to \$1.25 more is available depending on matching state support funding. Approval of United's Lifeline Service filing has been granted for the reasons set forth in the Board's Order of Approval, dated as of the date of this Order, in I/M/O a Petition by United Telephone Company of New Jersey, Inc. for Approval to Provide Lifeline Service, Docket No. TT97120880.

With regard to the requirement that United provide toll limitation services pursuant to 47 C.F.R. §§54.101(a) and 54.401(a)(3), and as defined at 47 C.F.R. §54.400, the Board, for the reasons annunciated in our Order of Approval in United's Lifeline docket, has granted this waiver subject to United reporting to Staff on the status of toll control one year after the date of that Order. The report should state whether toll control is technically feasible as the services is defined by the FCC and, if so, when United can implement it.

Finally, pursuant to 47 C.F.R. 554.201(d)(2), an ETC must "advertise the availability of [the above-referenced] services and charges using media of general distribution." United has indicated and the Board agrees that United's standard subscriber notification and public notice procedures including the use of the customer information Section of their directory, and its plans to advertise the availability of Lifeline Service via newspaper advertisement and bill imprints satisfies this requirement.

Having thoroughly considered this matter, and in concert with our Order of Approval at Docket No. T97120880, the Board FINDS that United meets the requirements of 47 U.S.C. 5214(e). Therefore, the Board HEREBY DESIGNATES United Telephone Company of New Jersey, Inc. an ETC for the geographic areas which it currently serves.

DATE: 1-23-98

BOARD OF PUBLIC UTILITIES
BY

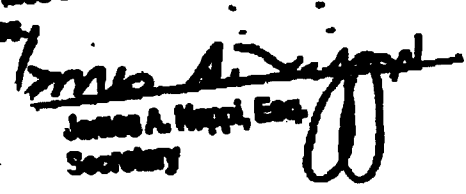

HERBERT H. TATE
PRESIDENT


CARMEN J. ARMENTI
COMMISSIONER

ATTEST:


JAMES A. NAPPI, Esq.
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
the files of the Board of Public
Utilities.


James A. Nappi, Esq.
Secretary

PETITION OF UNITED TELEPHONE COMPANY OF
NEW JERSEY, INC. TO BE DESIGNATED AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

SERVICE LIST
DOCKET NO. TT97110828

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Exhibit B



AGENDA DATE: 1/22/98

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF A PETITION BY)
UNITED TELEPHONE COMPANY OF)
NEW JERSEY, INC. FOR APPROVAL)
TO PROVIDE LIFELINE SERVICE)

ORDER OF APPROVAL

DOCKET NO. TT97120880

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated December 2, 1997, United Telephone Company of New Jersey, Inc. (United) filed a petition with the Board of Public Utilities (Board) to provide Lifeline Service to qualified customers by revising its tariff N.J. B.P.U. No.3. This service will enable United to comply with the requirements of 47 C.F.R. 54.405 that "[a]ll eligible telecommunications carriers shall make available Lifeline service, as defined in §54.401, to qualifying low income customers."¹ Pursuant to Federal Communications Commission (FCC) regulations, the following requirements must be met in order to provide Lifeline Service:

- (1) voice grade access to the public switched network;
- (2) local usage defined as an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;
- (3) dual tone multi-frequency signaling or its functional equivalent;
- (4) single-party service or its functional equivalent;
- (5) access to emergency services;
- (6) access to operator services;
- (7) access to interexchange services;
- (8) access to directory assistance; and
- (9) toll limitation for qualifying low income customers.

See 47 C.F.R. §§54.401 (a) (3) and 54.101.

¹ 47 C.F.R. §54.101, generally, sets forth the services and functionalities which shall be supported by federal universal support mechanisms for rural, insular and high cost areas. 47 C.F.R. §54.101 (c) provides that a state public utility commission may grant a telecommunications carrier, which is otherwise eligible to receive universal service support under 47 C.F.R. 54.201, additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation.

According to the filing, United's Lifeline Service is designed to lower the cost of basic telephone service for low income customers by providing credit of \$5.25 per month, composed of \$3.50 to offset the federal Subscriber Line Charge and an additional \$1.75 credit also provided by federal sources against the cost of local service.

In order to qualify for United's Lifeline services, a customer must be certified as income eligible or a recipient of benefits from any one of the following programs administered by the State of New Jersey or the Federal Government:

- (1) Temporary Assistance to Needy Families/Work First New Jersey;
- (2) General Assistance;
- (3) Home Energy Assistance Program;
- (4) Pharmaceutical Assistance to the Aged and Disabled;
- (5) Supplemental Security Income Medicaid;
- (6) Lifeline Utility Credit/Tenants Lifeline Assistance; or
- (7) Food Stamp Program.

United has proposed that Lifeline Service customers be blocked from access to 700, 900, 976 and all other announcement services and from optional services other than those required for protection or privacy e.g., non-published listing, Call Block, and Call Trace. Because of the expense of Caller ID service to the customer, United does not plan to advertise its availability to Lifeline subscribers, but will provide it to those who request it. In addition, according to the petition, Lifeline Service customers with a past due balance of \$20.00 or more in toll charges will be toll restricted until the balance is paid. The petition also provides that a restoration of service charge will apply to the restoration of toll service.

United has also agreed as part of this filing to place advertisements in local papers regarding the availability of Lifeline Service, issue a direct mail notification to eligible subscribers and further to announce the availability of Lifeline Service semi-annually via imprint on their customers bills.

DISCUSSION

The FCC requires that for a carrier to be eligible to receive universal service funding it must provide Lifeline Service. 47 C.F.R. §54.405. Pursuant to 47 U.S.C. §214(e), only an ETC shall be eligible to receive federal universal service funds, and the Board, upon its own motion or upon request, is empowered to designate a common carrier an ETC. United filed a petition on November 7, 1997 requesting designation by this Board as an ETC. That petition is being considered separately at Docket No. T097110828.

The Board notes that among the services or functionalities which shall be supported by federal universal services support mechanisms is a requirement that the carrier offer toll limitation for qualifying low-income consumers. 47 C.F.R. §54.101(a)(9); §54.401(a)(3). Toll limitation is defined to include both toll blocking and toll control. 47 C.F.R. §54.400(d). Toll blocking is a

service which lets consumers elect not to allow the completion of outgoing toll calls from their telephone, and toll control is a service which lets consumers specify a certain amount of toll usage that may be incurred on their telephone per month or per billing cycle. 47 C.F.R. §54.400(b) and (c).

In this filing, United is offering only toll blocking (at no charge). However, in its companion filing requesting ETC status (Docket No. TO97110828), it asserts that virtually no local exchange provider (LEC) in the nation is capable of providing toll control, which would require real-time capability to record and rate every call instantaneously as the caller attempts to make a call and also assumes that LEC's will be able to differentiate between toll calls and other types of calls. Pursuant to FCC regulations, the Board may grant a petition of a carrier, otherwise eligible to receive universal service support, which requests additional time to complete network upgrades to provide toll limitation services upon a finding that exceptional circumstances prevent such a carrier from providing toll limitation services. 47 C.F.R. §54.101(c). In this matter, United has convinced the Board that it is technically incapable of providing the full gamut of toll limitation services to its customers which the FCC requires, solely because the technology to provide toll control services is not available.

Accordingly, the Board FINDS that an exceptional circumstance exists which prevents United from providing toll limitation as defined by the FCC. However, because United will make available toll blocking, the Board HEREBY GRANTS a waiver of United's obligation to provide toll limitation services limited to its inability to provide toll control services until such time as toll control services are technically feasible or the FCC modifies this obligation. The Board DIRECTS United to report to Staff one year from the date of this Order whether such toll control services are technically feasible as defined by the FCC, and if so, when United can implement it.

Therefore, having reviewed the relevant FCC rules regarding universal services support as well as the complete record in this matter, the Board FINDS that United's Lifeline proposal will promote universal service in New Jersey by making basic telephone service more affordable to low-income consumers, and is therefore in the public interest. The Board FINDS that having granted United a limited waiver of its obligation to provide toll control services, United's proposal complies with relevant FCC regulations.

Therefore, the Board HEREBY APPROVES this petition to become effective February 1, 1998 on an interim basis. The Board also ORDERS that United advertise the availability of Lifeline Service in local newspapers within its service territory, announce the availability of this service semi-annually, via bill imprint on its customers bills and send direct mail notification to all clients of the New Jersey Programs listed above within its service territory. In order that the FCC certify that United's Lifeline plan meets FCC requirements, the Board DIRECTS United to file information with the FCC as set forth in 47 C.F.R. §54.401(d), and provide a copy of such filing to the Board. Finally, the Board notes that United's Lifeline

program is subject to review in the context of the Board's ongoing generic proceeding, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631, in which all aspects of universal service in New Jersey are being considered.

DATE: 1-23-98

BOARD OF PUBLIC UTILITIES
BY:


HERBERT H. TATE
PRESIDENT


CARMEN J. ARMENTI
COMMISSIONER

ATTEST:


JAMES A. NAPPI, ESQ.
SECRETARY

PETITION OF UNITED TELEPHONE COMPANY OF
NEW JERSEY, INC. FOR APPROVAL TO PROVIDE LIFELINE SERVICE

SERVICE LIST
DOCKET NO. TT97120880

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Exhibit C



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

AGENDA DATE: 12/16/98

IN THE MATTER OF A PETITION BY)
UNITED TELEPHONE COMPANY OF NEW)
JERSEY, INC. FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER UNDER THE TELECOMMUNI-)
CATIONS ACT OF 1996)

TELECOMMUNICATIONS

ORDER ON RECONSIDERATION

DOCKET NO. TO97110828

IN THE MATTER OF A PETITION BY)
UNITED TELEPHONE COMPANY OF NEW)
JERSEY, INC. FOR APPROVAL TO)
PROVIDE LIFELINE SERVICE)

DOCKET NO. TT97120880

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated February 9, 1998, United Telephone Company of New Jersey, Inc. (United) filed a Motion for Reconsideration with the New Jersey Board of Public Utilities (Board) in the above-captioned dockets requesting that the Board make United's Lifeline Plan effective January 1, 1998. According to United, in that way, it will be able to comply with the requirements of 47 C.F.R. 54.405 that all eligible telecommunications carriers shall make available Lifeline service as defined in 47 C.F.R. 54.401 to qualifying low-income customers, effective January 1, 1998. United also requested that the Board file a Petition for Waiver with the FCC to designate United's qualification as an Eligible Telecommunications Carrier (ETC), retroactive to January 1, 1998.

By way of background, by Orders issued January 23, 1998 in the above captioned dockets, the Board approved a December 2, 1997 petition by United for approval to provide Lifeline service to qualified customers, and a November 7, 1997 petition for designation as an ETC pursuant to 47 U.S.C. §214(e). In the Lifeline Order, the Board approved United's petition to become effective February 1, 1998, on an interim basis. Pursuant to the ETC Order, United's ETC designation became effective as of the date of the Order, that is, January 23, 1998.

Under the Federal Communications Commission's (FCC's) Order at CC Docket No. 96-45, In the Matter of Federal-State Joint Board on Universal Service (Released May 8, 1997), and in accordance with subsequent FCC regulations at 47 C.F.R. 54.401, et seq., only carriers that are designated as Eligible Telecommunications Carriers by a state Commission pursuant to Section 214(e) of the Telecommunications Act of 1996, may receive federal Universal Service support after January 1, 1998, for serving rural, insular (high-cost support) areas, or for providing Lifeline and Link-Up Services (low-income support). So as not to create a gap in United's ability to provide Lifeline Service and be designated as an ETC, United requested that the Board reconsider and clarify that United's Lifeline service be effective January 1, 1998.

Also, by Order issued on January 23, 1998, the Board approved United's Petition requesting that the Board designate United as an ETC. Pursuant to the Act, only a common carrier which is designated as an ETC is eligible to receive Universal Service support. In that Order, the Board found that United meets the requirements to be designated as an ETC for the geographic areas which it currently serves.

According to United's Motion, the FCC has provided a waiver process whereby state commissions could request that once a state Commission designates a carrier as eligible, it may provide justification as to why providing support retroactive to January 1, 1998, serves the public interest.

Because United's ETC designation and Lifeline Plan are not retroactive to January 1, 1998, United has asserted that there will be an adverse impact on United and its rural customers. United stated that traditionally it has relied on the high cost fund to provide affordable service to its customers in New Jersey, in the amount of approximately \$100,000 per month. According to United, any disruption in receipt of Universal Service support will affect United's ability to provide Universal Service in its high-cost, rural areas.

Therefore, United requested that the Board make United's Lifeline Plan effective January 1, 1998. United also requested that the Board file a Petition for Waiver with the FCC to designate United's qualification as an ETC, retroactive to January 1, 1998.

By letter dated March 5, 1998, the Division of the Ratepayer Advocate (Advocate) supported United's requests and stated that the interests of New Jersey's ratepayers compel the Board to grant United's Motion. The Advocate requested that the Board make United's Lifeline Plan effective January 1, 1998 and that the Board file a Petition for Waiver with the FCC to designate United an ETC retroactive to January 1, 1998.

DISCUSSION

With regard to the request by both United and the Advocate that the Board provide for universal service eligibility retroactive to January 1, 1998, the Board notes that United's application for ETC designation was filed on November 7, 1997, and its petition for Lifeline approval was filed on December 2, 1997, too late for consideration by the Board in 1997. However, we note that the clear intent of United's filings was that it become eligible for federal universal service support at the earliest date possible. As noted by the Advocate in its March 5, 1998 comments in this matter, the FCC recently considered and approved a mechanism whereby eligibility for federal universal service support retroactive to January 1, 1998 could be obtained. In its Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213 and 95-72 I/M/O Federal-State Joint Board on Universal Service, Order No. FCC 97-420 (released December 30, 1997) (hereinafter, Fourth Order on Reconsideration), the FCC affirmed a previous conclusion that, as of January 1, 1998, the universal service fund administrator may not disburse support to carriers that have not been designated as eligible under 47 U.S.C. 214(e), and that if a carrier has not been designated as eligible by January 1, 1998, it may not receive support until such time as it is designated an eligible telecommunications carrier. Fourth Order on Reconsideration at paragraph 23. Nevertheless, the FCC agreed with certain industry comments that a state commission that is unable to designate as an ETC before January 1, 1998, a carrier which had sought such designation before January 1, 1998, "should be permitted, once it had designated such carrier, to file with the [FCC] a petition for waiver requesting that the carrier receive universal service support retroactive to January 1, 1998." Ibid. The FCC declared that it is in the public interest to permit telecommunications carriers to seek retroactive support, and that allowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for the circumstances that prevented the state commission from designating the carriers as eligible for receipt of universal service support prior to January 1, 1998. Ibid. Finally, the FCC has stated that such a state commission petition for retroactive support eligibility for a carrier must explain why the state commission did not designate such carrier as eligible by January 1, 1998, and provide justification for why providing support retroactive to January 1, 1998 serves the public interest. Ibid.

In this matter, the Board agrees with United and the Advocate that eligibility for universal service support retroactive to January 1, 1998 is in the public interest. Despite the filing of its ETC application on November 7, 1997, too late for Board action in 1997, we note that United has met its obligations by filing a legally sufficient application prior to January 1, 1998. As already noted, United received approval for its Lifeline Program on January 23, 1998, having applied on December 2, 1997. The press of Board business and the finite resources of its Staff did not permit the Board to act any earlier than January 23, 1998 on United's Lifeline petition and ETC application. This fact should not cloud the fact that United perfected an ETC application within the timeframe set forth by the FCC in its Fourth Order on Reconsideration.

The Board is convinced that it is in the public interest to maximize every resource which can be brought to bear to extend universal service to all of the State's citizens, including available federal universal service support resources. Therefore, making as much federal Lifeline support available to United, and thereby to United's customer base, is also in the public interest.

In consideration of the foregoing, the Board GRANTS United's Motion for Reconsideration and ORDERS that United's Lifeline Plan be effective as of January 1, 1998. In addition, the Board DIRECTS its Staff, in conjunction with the Attorney General's Office, to prepare and file a petition with the FCC requesting that United be declared eligible for federal universal service support retroactive to January 1, 1998.

DATED: *December 16, 1998*

BOARD OF PUBLIC UTILITIES
BY:

[Signature]
HERBERT H. TATE
PRESIDENT

[Signature]
CARMEN J. ARMENTI
COMMISSIONER

ATTEST:

[Signature]
MARK W. MUSSER
SECRETARY

SERVICE LIST

BPU DOCKET NO. TO97110828

BPU DOCKET NO. TT97120880

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